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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
YOSHIHARU DEWA, ET AL. : EXAMINER: HUSSAIN, IMAD
SERIAL NO: 10/553,794 :
FILED: OCTOBER 18, 2005 : GROUP ART UNIT: 2451
FOR: CONTENT DISTRIBUTION :
SYSTEM, DISTRIBUTION METHOD,
CONTENT PROCESSING DEVICE,
PROCESSING METHOD

REPLACEMENT APPEAL BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This is a Replacement Appeal Brief in response to the Notification of Non-Compliant Appeal Brief dated June 22, 2009, and of the Final Rejection dated December 24, 2008 (herein, the Final Rejection), which finally rejected Claims 2, 3, 5-7, 9, and 11. A Notice of Appeal from this Final Rejection was timely filed on March 24, 2009.

I. REAL PARTY IN INTEREST

The real parties in interest for this Appeal in the present application are the Assignees, SONY CORPORATION and MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellants' knowledge there are no other appeals or interferences which will directly affect or be directly affected by, or have a bearing on, the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 2, 3, 5-7, 9 and 11 are pending in this application. Claim 1 was canceled by the amendment filed December 12, 2007, and Claims 4, 8 and 10 were canceled by the amendment filed April 16, 2008. The rejection of Claims 2, 3, 5-7, 9 and 11 are being appealed. Claims 2, 3, 5-7, 9 and 11 were rejected in the outstanding Final Action of December 24, 2008, hereinafter "FA." A clean copy of pending Claims 2, 3, 5-7, 9 and 11 is attached in the claims appendix.

IV. STATUS OF AMENDMENTS

No amendment has been filed after the FA.

V. SUMMARY OF CLAIMED SUBJECT MATTER¹

The following summary of claimed subject matter includes references to page and line numbers in the clean copy of the Substitute Specification filed on December 12, 2007.

Independent Claim 2

Claim 2 recites a content delivery method for a content delivery system (Figure 5) for delivering content from a content delivery apparatus (Figure 5, server 2) to a content processing apparatus (Figure 5, digital television receiving set 3) by way of a network. The claimed method includes, presenting a list of a plurality of sets of content (Figure 15, step S501; Figure 17; and Specification page 9, line 18 to page 9, line 2) including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files

¹ It is Appellants' understanding that, under the rules of Practice before the Board of Patent Appeals and Interferences, 37 CFR §41.37(c) requires that a concise explanation of the subject matter recited in each independent claim be provided with reference to the specification by page and line numbers and to the drawings by reference characters. However, Appellants' compliance with such requirements anywhere in this document should in no way be interpreted as limiting the scope of the invention recited in all pending claims, but simply as non-limiting examples thereof.

at a content processing apparatus. The claimed method further includes inputting specifying information specifying the set of content (Figure 15, step S502; and Figure 18, element 141 shows selected content), from the sets of content on the list, to be delivered to the content processing apparatus from the content delivery apparatus. The claimed method also includes receiving (Figure 8, step S53), by the content processing apparatus from the content delivery apparatus (Figure 8, step S122; Figure 11, step S253), a startup file (Specification page 19, lines 20-21; and Figures 10 and 13) specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license (Specification page 21, lines 3-5) of the specified set of content. Further, the claimed method includes automatically acquiring by the content processing apparatus, without receiving a user input selecting streaming or downloaded file as the method of content delivery, the set of content delivered from the content delivery apparatus according to the startup file (Specification page 26, line 20 to page 27, line 3). Thus, the claimed method advantageously allows a user to obtain content by simply selecting the content, without specifying the method of delivery (streaming or downloading). Instead the method of delivery is specified in a startup file provided by the content delivery apparatus. (Specification page 37, lines 1-6.)

Independent Claim 3

Claim 3 recites a content processing apparatus adapted to receive deliveries of content from a content delivery apparatus by way of a network. The claimed content processing apparatus includes means for presenting (Figure 2, presenting section 22; and Figure 23, output section 327) a list of a plurality of sets of content (Figure 17) including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files. The claimed content processing apparatus also includes means for inputting specifying information (Figure 2, input section 21; Figure 23, input section 326; and Figure 3, remote

commander 51) specifying the set of content to be delivered from the sets of content on the list. Further, the claimed content processing includes means for receiving (Figure 23, communication section 329; and Figure 2, browser 23) from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery (Specification page 19, lines 20-21; and Figures 10 and 13), the startup file corresponding to a license of the specified set of content (Specification page 21, lines 3-5). The claimed content processing apparatus also includes means for automatically acquiring (Figure 2, content reproducing section 24) the set of content delivered from the content delivery apparatus by way of the network without selecting streaming or downloaded file as the method of content delivery according to the startup file. (Specification page 26, line 20 to page 27, line 3.)

Independent Claim 6

Claim 6 recites a content processing method to be used for a content processing apparatus adapted to receive deliveries of content from a content delivery apparatus by way of a network. The claimed method includes presenting a list of a plurality of sets of content (Figure 15, step S501; Figure 17; and Specification page 9, line 18 to page 9, line 2) including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files. The claimed method further includes inputting specifying information specifying the set of content (Figure 15, step S502; and Figure 18, element 141 shows selected content) to be delivered from the sets of content on the list. The claimed method also includes receiving (Figure 8, step S53) from the content delivery apparatus (Figure 8, step S122; and Figure 11, step S253) a startup file (Specification page 19, lines 20-21; and Figures 10 and 13) specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license (Specification page 21, lines 3-5) of a set

of content. Further, the claimed method includes automatically acquiring the set of content delivered from the content delivery apparatus by way of the network without selecting streaming or downloaded file as the method of content delivery according to the startup file. (Specification page 26, line 20 to page 27, line 3.)

Independent Claim 7

Claim 7 recites a computer-readable recording medium (Specification page 39, lines 1-2) including computer executable instructions, which when executed by a content processing apparatus, cause the content processing apparatus to perform a method. The method includes presenting a list of a plurality of sets of content (Figure 15, step S501; Figure 17; and Specification page 9, line 18 to page 9, line 2) including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files. The method further includes inputting specifying information specifying the set of content (Figure 15, step S502; and Figure 18, element 141 shows selected content) to be delivered from the sets of content on the list. Further, the method includes receiving (Figure 8, step S53) from the content delivery apparatus (Figure 8, step S122; and Figure 11, step S253) a startup file (Specification page 19, lines 20-21; and Figures 10 and 13) specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license (Specification page 21, lines 3-5) of a set of content. The method also includes automatically acquiring the set of content delivered from the content delivery apparatus by way of the network without receiving a user input selecting streaming or downloaded file as the method of content delivery according to the startup file. (Specification page 26, line 20 to page 27, line 3.)

Independent Claim 9

Claim 9 recites a content processing apparatus adapted to receive deliveries of content from a content delivery apparatus by way of a network. The claimed apparatus includes a display (Figure 2, presenting section 22; and Figure 23, output section 327) configured to present a list of a plurality of sets of content (Figure 17) including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files. The claimed content processing apparatus further includes an interface configured to accept input specifying information (Figure 2, input section 21; and Figure 23, input section 326) specifying the set of content to be delivered (Figure 18, element 141 shows selected content) from the sets of content on the list. Further, the claimed content processing apparatus includes a receiver (Figure 23, communication section 329; and Figure 2, browser 23) configured to receive from the content delivery apparatus a startup file (Specification page 19, lines 20-21; and Figures 10 and 13) specifying streaming or downloaded file as a method of content delivery, the startup file corresponding to a license of the specified set of content (Specification page 21, lines 3-5). The claimed content processing apparatus also includes an acquisition unit (Figure 2, content reproducing section 24) configured to automatically acquire the set of content delivered from the content delivery apparatus by way of the network without selecting streaming or downloaded file as the method of content delivery according to the startup file. (Specification page 26, line 20 to page 27, line 3.)

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The rejection to be reviewed on appeal is whether Claims 2, 3, 5-7, 9, and 11 are unpatentable under 35 U.S.C. § 103(a) over Agresta et al. (U.S. Publication No. 2002/0091848, hereinafter “Agresta”), in view of Hegde et al. (U.S. Publication No. 2002/0007418, hereinafter “Hegde”), and further in view of Biddle et al. (U.S. Publication No. 2002/0107809, hereinafter “Biddle”). The FA also relied on Roberts et al. (U.S.

Publication No. 2004/0044569, hereinafter “Roberts”) to support the assertion that it is well known in the art that license files are used to determine whether a user has access to streaming or downloading delivery methods,² without including Roberts in the combination of Agresta, Hegde, and Biddle in rejecting Claims 2, 3, 5-7, 9, and 11.

VII. ARGUMENT

THE REJECTION OF CLAIMS 2-3, 6-7, AND 9 UNDER 35 U.S.C. § 103 (A)

Appellants respectfully submit that the combination of Agresta, Hegde and Biddle fails to render obvious all features recited in the claims. Specifically, no proper combination of the cited references teaches or suggests *receiving*, by the content processing apparatus from the content delivery apparatus, *a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content*, and automatically acquiring by the content processing apparatus, without receiving a user input selecting streaming or downloaded file as the method of content delivery, the set of content delivered from the content delivery apparatus *according to the startup file*.

The FA acknowledges that the combination of Agresta and Hegde fails to teach or suggest receiving a startup file specifying streaming or downloaded file as a method of content delivery.³ However, the FA asserts that Biddle cures this acknowledged deficiency of the combination of Agresta and Hegde. Specifically, the FA asserts that paragraph [0098] of Biddle describes a “license file” which is asserted to be the same as the startup file specifying streaming or downloaded file as a method of content delivery. Further, in responding to Appellants’ previous arguments, the FA asserts that Roberts supports the

² FA, page 3, lines 5-8.

³ FA, page 6, lines 1-2.

assertion that it is well known that license files are used to determine whether a user has access to streaming or downloading delivery methods.

A. Agresta describes a user selecting a method of content delivery, thus avoiding any kind of startup file that would indicate the method of content delivery.

Agresta describes a user selecting a method of content delivery, thus avoiding any kind of startup file that would indicate the method of content delivery. Agresta's "invention is tailored for storing, selecting, accessing and playing musical media."⁴ "[T]he user [has] the **option** of 'streaming' [content] to the terminal [...] or downloading the selection onto the memory of the terminal [emphasis added]."⁵ After the user selects the desired content to acquire, the "user then will have two options. One is to stream the [content]. The second option is [...] to download the full [content]."⁶ Agresta states that the **user must select** one of the content delivery options: whether content is to be streamed or downloaded, but is silent about this decision being made automatically based on the content of a startup file that is received from a content delivery apparatus.

B. It would be improper to change the teachings of Agresta by forcing onto the user a method of content delivery specified by the content delivery apparatus in the form of a startup file specifying the method of content delivery.

Because Agresta describes that the end user who receives content chooses the method of content delivery, it would be improper to change this teaching of Agresta by forcing onto the user a method of content delivery specified by the content delivery apparatus in the form of a startup file specifying the method of content delivery. Indeed, Agresta describes that the purpose of the system is to allow a user to purchase a terminal for obtaining entertainment

⁴ Agresta, paragraph [0019], lines 25-26.

⁵ Id., at paragraph [0025], lines 4-7.

⁶ Id., at paragraph [0055], lines 7-10.

content and then subscribing to content available from a content server.⁷ In some situations the terminal purchased by the user cannot connect to the server, and can only play content that is already stored on the terminal.⁸ Because the storage capacity of the terminal is limited, the user must actively decide which content to store on the terminal. In fact, “as additional selections are downloaded the **user can choose which selections to over-write to keep their hand-held selections current** [emphasis added].”⁹ Thus, the user’s decision to download content (rather than stream content) carries with it an implication of choosing which existing content to over-write. If the user does not wish to overwrite any existing content stored on the terminal, the user can instead choose to stream content. On the other hand, if the decision to download instead of streaming is made automatically, based on a startup file received from a content delivery apparatus, **the user would be deprived of the choice to preserve the existing content on the terminal**. This outcome is not contemplated by Agresta, and such a modification would render the resulting combination unsuitable for its intended purpose, because the user would no longer have control over keeping their hand-held selections current. Therefore, it would be improper to even attempt to modify the teachings of primary reference, Agresta, to approach the features recited in the independent claims.

C. The combination of Agresta, Hegde, and Biddle fails to teach or suggest receiving, by the content processing apparatus from the content delivery apparatus, a startup file specifying streaming or downloaded file as a method of content delivery.

Even if it were deemed proper to modify Agresta as suggested by the FA, the combination of Agresta, Hegde, and Biddle fails to teach or suggest receiving, by the content processing apparatus from the content delivery apparatus, a startup file specifying streaming

⁷ Agresta, paragraph [0021].

⁸ Id., at paragraph [0025], lines 14-15.

⁹ Id., at paragraph [0025], lines 15-19.

or downloaded file as a method of content delivery. As noted above, and acknowledged by the FA¹⁰, Agresta does not describe automatically selecting a delivery method based on a startup file received from a content delivery apparatus.

The secondary reference, Hegde describes a method and a system for delivery and monitoring an on-demand play list over a network and providing content from an origin server to a requesting device.¹¹ A play list is delivered to a requesting device over a network in an optimized manner.¹² Then, attributes of the requesting device, such as the operating system, a bandwidth parameter and the presence of a firewall, are determined.¹³ Hegde then uses these collected attributes to determine the method of delivery, whether streaming or downloading, based on the attributes of the requesting device and the size of the requested content.¹⁴ Thus, Hegde describes a method of acquiring certain attributes of the requesting device, and **using these attributes of the requesting device and the size of requested content to determine the method of delivery**, rather than using a file corresponding to the license of selected content to determine the delivery method. Therefore, Hegde does not teach or suggest receiving a file by the requesting device, where the file specifies the downloading method, and the file corresponds to a license of selected content. Consequently, Hegde does not teach or suggest *receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content.*

The FA asserts that “it would have been obvious ... to utilize the protocol selection scheme of Hegde for automatic attribute-based delivery selection in the system of Agresta[, because] ... the system would allow for users having low-bandwidth connections to obtain

¹⁰ FA, page 5, lines 6-8.

¹¹ Hegde, Figure 5.

¹² Id., at paragraph [0007], lines 1-4.

¹³ Id., at paragraph [0008], and Figure 12.

¹⁴ Id., at paragraph [0084], lines 2-7.

better multimedia experiences optimized for their devices [Hegde: Paragraph 0006 and 0009].”¹⁵

However, the FA does not assert that the combination of Agresta and Hegde teaches or suggests *receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content*. Indeed, the proposed combination does not teach or suggest these features. As noted above, Hegde describes selecting a method of content delivery **based on attributes of the requesting device and the size of the requested content**. However, Hegde does not describe *receiving* any information *from the content delivery apparatus* specifying the delivery method, much less a *startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content*, as recited in the independent claims. Therefore, the combination of Agresta and Hegde fails to teach or suggest this feature.

The FA acknowledges that the combination of Agresta and Hegde fails to teach or suggest a **startup file** as recited in the claims, but as noted above, the proposed combination also lacks any suggestion of *receiving from the content delivery apparatus* any information or instructions *specifying streaming or downloaded file as a method of content delivery*. Agresta describes that the user of a terminal makes the selection of a delivery method¹⁶ and Hegde describes that the determination of a delivery method is made based on attributes of the requesting device and the size of the requested content.¹⁷ Therefore, the combination of Agresta and Hegde fails to teach or suggest *receiving from the content delivery apparatus* any information or instructions *specifying streaming or downloaded file as a method of content delivery*, because each of the cited references describes a different approach to

¹⁵ FA, page 5, lines 15-21.

¹⁶ Agresta, paragraph [0025].

¹⁷ Hegde, paragraph [0084], lines 2-7.

specifying a method of content delivery.

The FA asserts that Biddle cures the acknowledged deficiency of the combination of Agresta and Hegde, but the FA does not address the additional deficiency of lacking *receiving from the content delivery apparatus* any information or instructions *specifying streaming or downloaded file as a method of content delivery*. Appellants respectfully submit that Biddle fails to cure either of these deficiencies.

Biddle describes a license file containing information “such as, for example, the machine ID for the user computer 30 running the application, name of the product, product number, license type, expiration date, options, level, version ID, and/or a digital signature.”¹⁸ Thus, Biddle describes a license file containing various pieces of information pertaining to the license of a software product, but the license file **does not include** information pertaining to the **method of content delivery**, such as streaming or downloaded file. In fact, Biddle describes only downloading as any method of delivering licensed software from a software server to a user,¹⁹ and doesn’t describe any other method of delivering software.

Downloading software is consistent with the overall objective of Biddle, which is to deliver **software** that a user can execute locally on his computer. One of ordinary skill in the art would recognize that a different delivery method, such as streaming, would be inapplicable to the software delivery approach described by Biddle, because executing software requires the entire executable to be present at a processor before it can be executed.

Further, Biddle is silent regarding *receiving from the content delivery apparatus* any information or instructions *specifying streaming or downloaded file as a method of content delivery*. As noted above, Biddle only describes downloading content.

Accordingly, Biddle not only fails to teach or suggest *startup file specifying streaming or downloaded file as a method of content delivery*, but also fails to teach or

¹⁸ Biddle, paragraph [0098].

¹⁹ Biddle, paragraphs [0016], [0017], [0049], [0054], [0072], [0086], [0087], [0091], [0092], [0093], [0094], [0106], [0107], [0112], and [0118].

suggest *receiving from the content delivery apparatus* any information or instructions *specifying streaming or downloaded file as a method of content delivery*. Therefore, Biddle fails to cure the deficiencies of the combination of Agresta and Hegde, and the combination of Agresta, Hegde, and Biddle fails to teach or suggest *receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content*.

Because independent Claims 2, 3, 6, 7, and 9 all recite the feature of *receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content*, Claims 2, 3, 6, 7, and 9 patentably define over any proper combination of Agresta, Hegde, and Biddle.

The Rejection of Claims 5 and 11 under 35 U.S.C. § 103 (a)

Appellants respectfully submit that Claims 5 and 11 patentably define over any proper combination of the applied references at least by virtue of dependence from Claims 3 and 9, respectively.

Conclusion

In view of above remarks, Appellants respectfully submit that the outstanding rejections of Claims 2, 3, 5-7, 9, and 11 as unpatentable under 35 U.S.C. § 103(a) over Agresta, in view of Hegde, and further in view of Biddle must be reversed, for all the above-noted reasons

Respectfully submitted,

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VIII. CLAIMS APPENDIX

Claim 1. (Canceled)

Claim 2. A content delivery method for a content delivery system for delivering content from a content delivery apparatus to a content processing apparatus by way of a network, the method comprising:

presenting a list of a plurality of sets of content including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files at a content processing apparatus;

inputting specifying information specifying the set of content, from the sets of content on the list, to be delivered to the content processing apparatus from the content delivery apparatus;

receiving, by the content processing apparatus from the content delivery apparatus, a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content; and

automatically acquiring by the content processing apparatus, without receiving a user input selecting streaming or downloaded file as the method of content delivery, the set of content delivered from the content delivery apparatus according to the startup file.

Claim 3. A content processing apparatus adapted to receive deliveries of content from a content delivery apparatus by way of a network, the apparatus comprising:

means for presenting a list of a plurality of sets of content including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files;

means for inputting specifying information specifying the set of content to be delivered from the sets of content on the list;

means for receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of the specified set of content; and

means for automatically acquiring the set of content delivered from the content delivery apparatus by way of the network without selecting streaming or downloaded file as the method of content delivery according to the startup file.

Claim 4. (Canceled)

Claim 5. The apparatus according to claim 3, wherein the startup file further includes information for accessing the sets of content.

Claim 6. A content processing method to be used for a content processing apparatus adapted to receive deliveries of content from a content delivery apparatus by way of a network, the method comprising:

presenting a list of a plurality of sets of content including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files;

inputting specifying information specifying the set of content to be delivered from the sets of content on the list;

receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of a set of content; and

automatically acquiring the set of content delivered from the content delivery apparatus by way of the network without selecting streaming or downloaded file as the method of content delivery according to the startup file.

Claim 7. A computer-readable recording medium including computer executable instructions, which when executed by the content processing apparatus, cause the content processing apparatus to perform a method comprising:

presenting a list of a plurality of sets of content including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files;

inputting specifying information specifying the set of content to be delivered from the sets of content on the list;

receiving from the content delivery apparatus a startup file specifying streaming or downloaded file as a method of content delivery, said startup file corresponding to a license of a set of content; and

automatically acquiring the set of content delivered from the content delivery apparatus by way of the network without receiving a user input selecting streaming or downloaded file as the method of content delivery according to the startup file.

Claim 8. (Canceled)

Claim 9. A content processing apparatus adapted to receive deliveries of content from a content delivery apparatus by way of a network, the apparatus comprising:

a display configured to present a list of a plurality of sets of content including at least a set of content to be delivered by streaming and a set of content to be delivered by downloaded files;

an interface configured to accept input specifying information specifying the set of content to be delivered from the sets of content on the list; a receiver configured to receive from the content delivery apparatus a startup file specifying streaming or downloaded file as

a method of content delivery, said startup file corresponding to a license of the specified set of content; and

an acquisition unit configured to automatically acquire the set of content delivered from the content delivery apparatus by way of the network without selecting streaming or downloaded file as the method of content delivery according to the startup file.

Claim 10. (Canceled)

Claim 11. The apparatus according to claim 9, wherein the startup file further includes information for accessing the sets of content.

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IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.